

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC SEAN DRAPER,

Defendant-Appellant.

UNPUBLISHED

March 23, 2004

No. 243021

Tuscola Circuit Court

LC No. 01-008085-FC

Before: Borrello, P.J., and White and Smolenski, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I agree with the majority in all respects except regarding OV 3, as to which I dissent. There is no diminishing the seriousness of the shootings, but there is no evidence that Stevens suffered a “permanent incapacitating injury,” or that his injuries were “life-threatening.” Neither Stevens nor the doctor who treated him at St. Mary’s Hospital testified at trial that his injuries were life-threatening. The PSIR section Stevens completed states under “Victim’s Physical or Emotional Injury,” “I had some hearing loss but no treatment because it is better now.” MCL 777.33 states that twenty-five points is scored where “Life threatening or permanent incapacitating injury *occurred to* a victim,” not where the injury *could* have been life threatening (emphasis added).

Defendant should thus have been scored ten points, rather than twenty-five points, for OV 3. The errors in OV 3 and 13, if corrected, would lower defendant’s OV score from level VI to level V, bringing a reduction in the corresponding sentence range. I would therefore remand for resentencing.

/s/ Helene N. White